

IN THE MICHIGAN SUPREME COURT
Appeal from the Michigan Court of Appeals
Wilder, PJ, and Saad and K.F. Kelly, JJ

IN THE MATTER OF
ARS, Minor

Circuit Court No. 13-003727-AF
Court of Appeals No. 318638
Supreme Court No. 150142

APPELLEE'S SUPPLEMENTAL BRIEF

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SUMMARY OF THE ARGUMENT

This Court should deny the maternal grandparents' application for leave to appeal because the case does not raise jurisprudentially significant issues nor does it reflect an instance where a trial court abused its discretion or committed clear error.¹ Rather, the trial court correctly denied the maternal grandparents' request to adopt Adelyn Schnebelt, the daughter of Derek Musall, after finding that the maternal grandparents had impeded Mr. Musall's access to his daughter and were inappropriately using the Adoption Code, not to take over as Adelyn's parents, but simply to eliminate Mr. Musall from his daughter's life.

¹ In their application, the Petitioners try to create a jurisprudentially significant question in this case by arguing that the Court of Appeals has issued a series of unpublished opinions that contravene the holding in *In re MKK*, 286 Mich App 546; 781 NW2d 132 (2009). Application for Leave to Appeal at 20. This is simply incorrect. The Court of Appeals has strictly applied the *MKK* holding and has only allowed adoption proceedings to be stayed pending a paternity action where it has found that the fathers genuinely wanted to be a parent to his child, did not unreasonably delay the filing of his paternity action and did not file the paternity action simply to thwart the adoption case. See *In re KMS*, unpublished opinion per curiam of the Court of Appeals, issued August 15, 2013 (Docket No. 314151) (finding that "respondent's efforts to perfect his paternity began before the child's birth and continued unremittingly thereafter"). In contrast, the Court of Appeals has consistently terminated the rights of putative fathers who made no effort to establish paternity over their children and had no involvement in their children's lives. See *In re MMK*, unpublished opinion per curiam of the Court of Appeals, issued July 29, 2014 (Docket No. 319156) (finding that respondent never filed a paternity action and never asked for an adjournment of the adoption case until after the end of the termination of parental rights hearing); *In re J Minor*, unpublished opinion per curiam of the Court of Appeals, issued June 24, 2014 (Docket No. 319359) (noting that the putative father had not sought an order of filiation, did not express an intent to file an action under the Paternity Act, much less request a stay in order to file such an action). The test established in *MKK* is sound and there is no need for this Court's involvement at this time.

In their application, the maternal grandparents ask this Court to serve as a trial court and resolve disputed factual issues already considered by the trial court during an evidentiary hearing that lasted two full days. See Bench Opinion and Order dated 9/26/13, at 5. During the hearing, the court heard from eleven witnesses, admitted numerous exhibits into evidence and thoroughly considered the legal arguments submitted by the three attorneys in the case.

At the conclusion of the hearing, the court determined that “good cause” existed to allow Mr. Musall’s paternity action to precede the adjudication of the adoption petition and found that Mr. Musall was Adelyn’s legal father, a fact that no party actually disputed. *Id.* The court found that Mr. Musall testified candidly and attempted to 1) support the mother during her pregnancy and 2) be involved in his daughter’s life to the extent he was allowed to. *Id.* at 4, 6. In contrast, the court noted that both the maternal grandparents and the mother were not completely truthful in their testimony and impeded Mr. Musall’s attempts to become involved in Adelyn’s life. *Id.* at 4, 5. Importantly, the court noted that its decision was based on its unique opportunity to evaluate the veracity and credibility of the witnesses, as the case presented numerous, conflicting factual claims. *Id.* at 3.

The court also found that it would have reached the same outcome had it decided the adoption case first. *Id.* at 5. It found that Mr. Musall did attempt to provide substantial and regular support to Ms. Schnebelt, to the extent he was permitted, during her pregnancy. *Id.* at 6. Unsurprisingly, the Court of Appeals refused to disturb the factual findings and credibility determinations made by the trial court. *In re ARS*,

unpublished decision per curiam of the Court of Appeals dated June 12, 2014 (Docket No. 318638).

No reason exists for this Court to second-guess factual findings made by the trial court and left undisturbed by the Court of Appeals. Instead, this Court should permit Adelyn to have the right to maintain her relationship with her birth father. Thus, this Court should deny the application for leave to appeal.

STATEMENT OF QUESTIONS PRESENTED

1. A court may adjourn an adoption proceeding based on a showing of “good cause.” MCL 710.25(2). “Good cause” exists when a trial court has a “satisfactory, sound or valid reason” to act. *People v Buie*, 491 Mich 294, 319; 817 NW2d 33 (2012). Here, the trial court adjourned the adoption proceeding to confirm that Mr. Musall was Adelyn’s birth father. Then, after holding a full evidentiary hearing on the adoption petition, it determined that “good cause” existed to adjudicate Mr. Musall’s paternity action first because Mr. Musall did not file his paternity action simply to thwart the adoption, he had a sincere interest in being a father, and the maternal grandparents and the mother prevented him from doing so. Did the trial court have “good cause” to adjourn the adoption proceeding?

The trial court answered yes to this question.

The Court of Appeals answered yes to this question.

The Appellee answers yes to this question.

2. A court may only terminate the rights of a father if it finds that the father failed to provide “substantial and regular support or care in accordance with [his] ability to care for the mother during pregnancy” or for the mother or child during the 90 days preceding the notice of the proceeding. MCL 710.39(2). Here, after hearing from eleven witnesses and reviewing many documents, the trial court determined that Mr. Musall provided the mother with financial support during her pregnancy and that he did not have the ability to do more because of the actions of the maternal grandmother and the mother. Did the trial court commit clear error?

The trial court answered no to this question.

The Court of Appeals did not answer this question.

The Appellee answers no to this question.

3. The Adoption Code requires courts to give adoption proceedings “the highest priority” while protecting the rights of all parties. MCL 710.25(1); MCL 710.21a. Here, the trial court refused to stay the adoption proceedings even after Mr. Musall filed his paternity action. Instead, it convened a two-day evidentiary hearing on the adoption petition and only decided Mr. Musall’s paternity action after considering all of the evidence in the adoption case. Did the trial court give the adoption proceeding “the highest priority” while protecting the rights of all parties?

The trial court did not answer this question.

The Court of Appeals did not answer this question.

The Appellee answers yes to this question.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Two Young Parents Allow Maternal Grandparents To Co-Parent Their Oldest Daughter

Derek Musall and Kayleigh Schnebelt, Adelyn's mother, began a relationship in the middle of 2009. 7/19/13 Tr. at 29. Roughly a year later, Ms. Schnebelt gave birth to their first daughter, Gracie. *Id.* at 52. When Ms. Schnebelt was pregnant with Gracie, Mr. Musall attended all prenatal appointments. *Id.* at 172. He was present at Gracie's birth and signed an affidavit of parentage, immediately making him Gracie's legal father. *Id.* at 161, 172; 8/16/13 Tr. at 109.

After Gracie's birth, Mr. Musall and Ms. Schnebelt lived with Ms. Schnebelt's parents; Gracie slept with them in their room. 7/19/13 Tr. at 52, 172. But as young parents, they recognized their own limitations and their need to receive as much support as possible. So, in September 2010, they consented to Gracie's adoption by the maternal grandparents. *Id.* at 53. While the parents' offered conflicting testimony about why they consented to the adoption,² what was clear was that little actually changed after Gracie's adoption. *Id.* at 177. Both parents remained actively involved in raising their daughter even after the court approved the adoption. See Bench Opinion and Order dated 9/26/13, at 3, 4. In fact, the maternal grandfather assured Mr. Musall that "he's not raising another kid." 7/19/13 Tr. at 175.

² Mr. Musall, who did not have a lawyer in Gracie's adoption case, testified that he did not know he was consenting to Gracie's adoption but instead believed that he was consenting to a guardianship so that Gracie could receive health insurance through the maternal grandfather's job. 7/19/13 Tr. at 159, 160, 175, 176. His grandmother corroborated this by also testifying that she believed Gracie had been placed in a guardianship. 8/16/13 Tr. at 120.

A few months after Gracie's adoption, Mr. Musall and Ms. Schnebelt moved out of the maternal grandparents' home into their own apartment, where they lived for approximately five or six months. *Id.* at 179. During that time, Gracie lived with them for at least two or three days a week, if not longer, and stayed with them overnight. *Id.* at 54, 130, 131, 178; 8/16/13 Tr. at 129. The apartment contained toys, clothing and a crib for Gracie. 7/19/13 Tr. at 53, 132; 8/16/13 Tr. at 62.

Mr. Musall and Ms. Schnebelt shared the responsibility of parenting Gracie. 7/19/13 Tr. at 188. According to Mr. Musall's work supervisor, Thomas Hameline, and his wife, Katie, Mr. Musall did "his fair share of feeding and changing diapers" and was "playful and happy" with Gracie. *Id.* at 134, 151. Mr. Musall's grandparents also observed Mr. Musall caring for Gracie. 8/16/13 Tr. at 102, 103, 109. Mr. Musall's grandmother described him as a "very loving parent" who "cared a lot" about Gracie. *Id.* at 111. She described how Gracie's face "would light up" when she saw Mr. Musall. *Id.* at 112.

About six months later, Mr. Musall and Ms. Schnebelt broke up. 7/19/13 Tr. at 179. Ms. Schnebelt moved back in with her parents but still allowed Gracie to stay with Mr. Musall overnight. *Id.* However, that visitation arrangement ended abruptly after an argument between Mr. Musall and the maternal grandmother. *Id.* at 180.

Nevertheless, a month after they broke up, Mr. Musall and Ms. Schnebelt resumed their relationship and lived together again, first at Mr. Musall's grandparents' home and then in their own apartment. 7/19/13 Tr. at 184. During this period, they both saw Gracie regularly. *Id.* at 185. In the new apartment, they had a crib, toys, and

clothing for their daughter, who stayed with them for a few days during the week. *Id.* at 185, 186.

After roughly three months, Mr. Musall and Ms. Schnebelt split up again. Ms. Schnebelt moved back in with her parents. *Id.* at 189. At first, after Ms. Schnebelt learned that Mr. Musall had entered into a relationship with another woman, she completely cut off contact with him. *Id.* at 192. But then, she allowed him to see Gracie occasionally. *Id.* at 194. That contact, however, stopped after Ms. Schnebelt discovered that Mr. Musall allowed Gracie to visit relatives of Mr. Musall's new girlfriend. *Id.* at 195. Mr. Musall called Ms. Schnebelt to try to see Gracie but Ms. Schnebelt would not allow it. *Id.* at 198, 199. During one of those phone calls, Mr. Musall overheard the maternal grandfather threatening that he had an unregistered gun that he would use if Mr. Musall tried to come to their house. *Id.* at 199. So Mr. Musall did not go to the home because he did not want to get shot. *Id.* at 199, 200.

Mr. Musall Provides Support To Ms. Schnebelt During Her Pregnancy Of Adelyn

In August 2011, Ms. Schnebelt learned that she was pregnant with Adelyn. 7/19/13 Tr. at 29. She had no doubts that Mr. Musall was Adelyn's father. *Id.* at 65. So a few weeks after finding out, she met with him to discuss his role in raising his newest daughter. *Id.* at 30. Mr. Musall told her he wanted to attend prenatal appointments, be present at Adelyn's birth and be involved in her life, as he had been with Gracie. *Id.* at 60, 61, 165; 8/16/13 Tr. at 136. Ms. Schnebelt agreed and said she wanted him at Adelyn's birth as well, just not in the delivery room. 7/19/13 Tr. at 202, 203. Mr.

Musall's understanding was that either Ms. Schnebelt or his mother would call him to let him know when Ms. Schnebelt was going into labor. *Id.* at 203.

Over the new few months, Mr. Musall helped Ms. Schnebelt as he was allowed to. He offered to take Ms. Schnebelt to doctor's appointments but she refused his help. *Id.* at 192. On a number of occasions, he gave her money, totaling several hundred dollars, to pay for gas and her phone bill. *Id.* at 71, 72, 73. He also gave her a bag full of clothes, purchased by him and his extended family, for both Gracie and Adelyn. *Id.* at 83.

Otherwise, Ms. Schnebelt had very little contact with Mr. Musall during the period prior to Adelyn's birth. Ms. Schnebelt was angry that he was in a new relationship and did not want him involved in her life in any way. *Id.* at 192; Bench Opinion and Order dated 9/26/13, at 5. And Mr. Musall felt that his proper course of action was to not insert himself into an already toxic environment.

Mr. Musall Is Not Informed About Adelyn's Birth

Adelyn was born on March 29, 2012. On the day she was born, Ms. Schnebelt made it clear that she did not want Mr. Musall around. 7/19/13 Tr. at 34. She explicitly told Mr. Musall's mother, with whom she was close, not to tell Mr. Musall about the birth, but she promised that she would call him the next day. *Id.* at 62, 63; 8/16/13 Tr. at 135, 156. That never happened. Mr. Musall was never informed about his daughter's birth, was not at the hospital and only found out about Adelyn's birth later possibly through social media. 7/19/13 Tr. at 34, 74.

After her birth, Adelyn remained with Ms. Schnebelt in her parents' home. *Id.* at 38. Mr. Musall attempted to contact Ms. Schnebelt via phone and through social media. *Id.* at 36. Both Ms. Schnebelt and the maternal grandmother testified that they were angry at Mr. Musall and did not want him involved in Adelyn's life. *Id.* at 64, 65; 8/16/13 Tr. at 89, 90. The maternal grandmother openly admitted that she would not have allowed parenting time. 8/16/13 Tr. at 92. Simply put, she did not want Mr. Musall in her home. *Id.* at 69, 89. But Ms. Schnebelt still allowed Mr. Musall's mother to see Adelyn and Gracie. *Id.* at 138.

Mr. Musall Develops A Relationship With Adelyn, Which Is Abruptly Stopped By The Mother And The Maternal Grandparents

Then in June 2012, Mr. Musall finally had his chance to see his daughter. 7/19/13 Tr. at 204. Unbeknownst to the maternal grandparents, Mr. Musall went to their home and spent four to five hours with Adelyn and Ms. Schnebelt. *Id.* at 75, 204-205. A few weeks later, Mr. Musall saw Adelyn during the Fourth of July Parade. *Id.* at 76, 207. He met Adelyn, Gracie and Ms. Schnebelt and hung out with them for the rest of the day. *Id.* at 207.

These initial visits set into motion a more regular visitation schedule that lasted two months. Beginning in late July or early August, Mr. Musall began seeing Adelyn and Gracie twice a week at his mother's house. *Id.* at 76, 208, 209; 8/16/13 Tr. at 143, 188. Ms. Schnebelt would drop the girls off at Mr. Musall's mother's home in the morning. 7/19/13 Tr. at 76. Mr. Musall would then come to his mother's home, spend the day with his daughters, and leave before Ms. Schnebelt arrived to pick the girls up.

Id. at 76; 8/16/13 Tr. at 145. During these days, Mr. Musall would pick up Adelyn, play with her, feed her and change her diaper. 7/19/13 Tr. at 80, 212; 8/16/13 Tr. at 146. He bought diapers and wipes for her and took her for walks. 7/19/13 Tr. at 166; 8/16/13 Tr. at 147. According to his grandmother, he was “very attentive” and would not let her go. 8/16/13 Tr. at 114. But when Mr. Musall asked Ms. Schnebelt if he could spend extra time with his daughters, she said no. 7/19/13 Tr. at 78. The maternal grandparents did not know about these visits. 8/16/13 Tr. at 69.

At the end of September, the visits abruptly stopped. 7/19/13 Tr. at 213. Gracie began making statements about discomfort she was feeling when she was peeing. 8/16/13 Tr. at 148, 149. Ms. Musall’s mother reported her concerns to the maternal grandmother, who became very upset. *Id.* at 150. Concerned, Mr. Musall reported Gracie’s statements to Child Protective Services. 7/19/13 Tr. at 121, 122. As a result, Ms. Schnebelt and the maternal grandmother immediately stopped the visits. 8/16/13 Tr. at 148, 149, 150, 151. They did not allow Mr. Musall and his family to see the girls again.

Similar to previous conflicts, Mr. Musall assumed that this situation would resolve itself and that he would resume his relationship with Adelyn. Bench Opinion and Order dated 9/26/13, at 4, 6. He did not want to involve the courts as he felt that doing so would make the situation worse. *Id.* He tried to contact Ms. Schnebelt via phone and social media and offered to support Adelyn. 7/19/13 Tr. at 214, 215. But he couldn’t reach her. *Id.* at 214. So he waited for tensions to cool down.

After A Two-Day Evidentiary Hearing, Mr. Musall Becomes Adelyn's Legal Father

That never happened. Instead, on January 14, 2013, the maternal grandparents, with the support of Ms. Schnebelt, filed a petition to adopt Adelyn and to terminate the parental rights of Mr. Musall. While seeking to eliminate Mr. Musall's involvement in Adelyn's life, the maternal grandparents had no intention of ending Ms. Schnebelt's relationship with Adelyn. See Bench Opinion and Order dated 9/26/13, at 5. Instead, as noted by the trial court, they sought to take the relationship between Adelyn, her parents and themselves "from a square to a triangle." *Id.*

For the first time, Mr. Musall retained an attorney. A month later, he filed a paternity action requesting the court to make him Adelyn's legal father. The court ordered DNA testing that eventually confirmed that Mr. Musall was Adelyn's father and adjourned the adoption hearing pending the completion of the DNA testing.

While both actions were pending, Mr. Musall and his wife, Haley, became parents to a new baby, Aiden. 7/19/13 Tr. at 93, 98. Mr. Musall was thrilled to be a father again. According to numerous witnesses including his wife, his mother and his grandmother, he was always smiling and cheerful to have his son in his arms, would change diapers and would feed and play with the baby. *Id.* at 136; 8/16/13 Tr. at 186. Mr. Musall and his wife moved into a larger, three-bedroom house to ensure that there would be room for both Aiden and Adelyn. 7/19/13 Tr. at 100, 217. Mr. Musall also maintained his full-time job to support his family. *Id.* at 85-87. His wife stayed at home with the baby. 8/16/13 Tr. at 183.

In July 2013, the court convened a two-day evidentiary hearing on the adoption petition, denying Mr. Musall's request to stay the proceeding. 7/19/13 Tr. at 17. At the outset of the hearing, the court received DNA test results proving that Mr. Musall was Adelyn's father, a fact no party actually disputed. *Id.* at 5. Based on the test results, Mr. Musall filed a motion for summary disposition in the paternity action, which the trial court refused to decide until it received all the proofs in the adoption case. 8/16/13 Tr. at 36.

At the conclusion of the evidentiary hearing, the court issued a written opinion finding that "good cause" existed to allow Mr. Musall's paternity action to precede the adjudication of the adoption petition. See Bench Opinion and Order dated 9/26/13, at 5. The court reached this decision based on a number of factors including: 1) the uncontested fact that Mr. Musall was Adelyn's biological father; 2) his genuine desire to be a father to his daughter; 3) his candor before the court; 4) his efforts to support Ms. Schnebelt during the course of her pregnancy; and 5) the actions of Ms. Schnebelt and the maternal grandparents to impede his efforts to develop a relationship with Adelyn. It made Mr. Musall's Adelyn's legal father in the paternity action and dismissed the adoption petition. *Id.*

The court also noted that it would have reached the same outcome had it decided the adoption petition before the paternity action. See Bench Opinion and Order dated 9/26/13, at 5. It found that Mr. Musall did attempt to provide substantial and regular support to Ms. Schnebelt, to the best of his ability, during her pregnancy. *Id.* at 6. Since it ruled that the maternal grandparents did not meet their statutory burden, it never

issued a ruling on whether it would be in the best interests of Adelyn to award him custody.

After making its decisions, the court referred the parties to the Friend of the Court to determine parenting time for Mr. Musall. See Paternity Register of Actions.

The maternal grandparents appealed the trial court's decision. On June 12, 2014, the Court of Appeals, in a unanimous decision, affirmed the trial court's decision. See *In re ARS*, unpublished decision of the Court of Appeals dated June 12, 2014 (Docket No. 318638). The Court of Appeals found that Mr. Musall's access to the child was inconsistent because of the control exercised by the mother and the maternal grandmother. *Id.* at 2. It noted that any delay in filing the paternity action was reasonable given Mr. Musall's desire to informally negotiate an arrangement with Ms. Schnebelt and not proceed directly to court. *Id.* It also observed that he did not file his paternity complaint simply to thwart the adoption but to "ensure he has a relationship with the child" with whom he had visited and cared for on previous occasions. *Id.*

ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT “GOOD CAUSE” EXISTED TO DECIDE THE PATERNITY ACTION PRIOR TO RULING ON THE ADOPTION PETITION.

Standard of Review

A trial court’s decision to adjourn a proceeding should not be reversed absent an abuse of discretion. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996). An abuse of discretion involves “ far more than a difference in judicial opinion between the trial and appellate courts.” *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959). In fact, for a trial court to abuse its discretion, “the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.” *Id.*

Argument

The Adoption Code permits a trial court to adjourn a proceeding based on a showing of “good cause.” MCL 710.25(2). “Good cause” simply means “a satisfactory, sound or valid reason.” *People v Buie*, 491 Mich 294, 319; 817 NW2d 33 (2012).

One reason why a trial court may adjourn an adoption proceeding is to adjudicate a father’s paternity action, filed to protect a natural father’s right to have a legal relationship with his child. Once a father perfects his paternity and becomes a legal father, he gains the statutory right to seek custody of his child, obtain parenting time and only have his rights terminated pursuant to the protections of the Juvenile Code. Given the paramount importance this Court has always placed on the parent-

child relationship, courts must proceed carefully and deliberately before issuing orders affecting this fundamental relationship. As noted by Judge Saad of the Court of Appeals, “While timeliness is important, the judiciary should never lose sight of the more important value inherent in the parent-child relationship. . . Our guiding principle should be to promote and preserve this most cherished relationship.” *In re KMS*, unpublished opinion per curiam of the Court of Appeals, issued on August 15, 2013 (Docket No. 314151), (SAAD, J. concurring).

Consistent with these weighty interests, in *In re MKK*, 286 Mich App 546; 781 NW2d 132 (2009), the Court of Appeals identified reasons that constitute “good cause” to adjourn an adoption proceeding to first make a decision in a pending paternity action. There, as in this case, a birth father sought to become a child’s legal father through a paternity action at the same time potential adoptive parents were attempting to adopt a child. *Id.* The Court of Appeals held that “where there is no doubt that respondent is the biological father, he has filed a paternity action without unreasonable delay, and there is no direct evidence that he filed the action simply to thwart the adoption proceedings, there is good cause for the court to stay the adoption proceedings and determine whether the putative father is the legal father.” *Id.* at 563.

In identifying these factors, the Court of Appeals observed that allowing a paternity action to precede the adjudication of an adoption petition is perfectly consistent with the goals of the Adoption Code. *Id.* at 563. While the Adoption Code requires courts to “safeguard and promote the best interests of each adoptee,” MCL 710.21a, this Court has repeatedly presumed that the best interests of children are

served when children can be cared for by their birth parents. See, e.g., *In re Sanders*, 495 Mich 394, 410; 852 NW2d 524 (2014); *Hunter v Hunter*, 484 Mich 247, 279; 771 NW2d 694 (2009).³ Thus, allowing a man who has asked to become a legal father and who is genuinely interested in being a father perfect his paternity is consistent with the goals of the Adoption Code. Nowhere does the Adoption Code mandate expediency at the expense of unnecessarily terminating a child's relationship with her birth father. In fact, the Code explicitly instructs trial courts to protect "the rights of all parties concerned." MCL 710.21a.

Here, the trial court convened a full evidentiary hearing on the adoption petition prior to finding that there was "good cause" to rule on the paternity action first. It heard from eleven witnesses, considered many exhibits, and made important credibility determinations in resolving numerous, conflicting factual allegations. After doing so, it applied the *MKK* test and cited several "satisfactory" reasons supporting this decision.

First, the court found that Mr. Musall was Adelyn's birth father, a fact that no one actually disputed. 7/19/13 Tr. at 11. DNA test results confirmed this. *Id.* at 5.

Second, the court determined that Mr. Musall filed his paternity action without unreasonable delay. He filed the action approximately a month after he first learned that the maternal grandparents intended to adopt Adelyn.⁴ Prior to filing his action, he

³ This historical presumption is rooted in the fact that "the natural bonds of affection lead parents to act in the best interests of their children." *Parham v JR*, 442 US 584, 602; 99 S Ct 2493; 61 L Ed 2d 101 (1979).

⁴ In *MKK*, the birth father knew that the mother intended to put the child up for adoption prior to the baby's birth. *MKK*, 286 Mich App at 548-549. Here, Mr. Musall

assumed that he would resolve his differences with Adelyn's mother, Ms. Schnebelt, as he had done before. See Bench Opinion and Order dated 9/26/13, at 4, 6. He did not want to involve the court unnecessarily, a belief that the trial court deemed was sincere and "understandable" given his history of working out issues with Ms. Schnebelt. *Id.*

Third, Mr. Musall did not file the paternity action simply to thwart the adoption proceedings. Rather, he genuinely wanted to be a father to his daughter. He took advantage of every opportunity he was given to see both Adelyn and her older sister, Gracie. In the two months in 2012 when Ms. Schnebelt permitted him to see Adelyn and Gracie, he saw them at least twice a week and spent entire days with them.

7/19/13 Tr. at 76, 208, 209; 8/16/13 Tr. at 143, 188. During each visit, he showed that he was a capable father, enjoyed his time with his daughters and eagerly participated in the more mundane tasks associated with childrearing such as changing diapers and feeding his children. 7/19/13 Tr. at 80, 212; 8/16/13 Tr. at 146. He also bought them diapers and other items. 7/19/13 Tr. at 166; 8/16/13 Tr. at 147. According to his grandmother, he was "very attentive" and would not let Adelyn go. 8/16/13 Tr. at 114.

Additionally, the trial court heard testimony about Mr. Musall's strong commitment to his youngest son, Aiden, his role in raising Aiden with his wife, and the couple's desire to welcome Adelyn into their home. 7/19/13 Tr. at 100, 136, 217; 8/16/13 Tr. at 186. And prior to the abrupt decision by the maternal grandparents and Ms. Schnebelt disallowing him to see Gracie, she lived with him several days a week.

had no knowledge that Ms. Schnebelt wanted her parents to adopt Adelyn until they actually filed the adoption petition.

7/19/13 Tr. at 54, 130-131, 178; 8/16/13 Tr. at 129. Again, Mr. Musall did his “fair share of feeding and changing diapers” and was “playful and happy” with Gracie. 7/19/13 Tr. at 134, 151. Mr. Musall’s grandmother described him as a “very loving parent” who “cared a lot” about Gracie. 8/16/13 Tr. at 111. His grandmother described how Gracie’s face “would light up” when she saw him. *Id.* at 112. All of these facts demonstrated that Mr. Musall was genuinely interested in being a father to his children.

Finally, the trial court found that the motives of the maternal grandparents and the mother in filing the adoption petition undermined the goals of the Adoption Code. See Bench Opinion and Order dated 9/26/13, at 5. Under the Code, the purpose of seeking an adoption is to make the adopting parents, as much as possible, the natural parents of the child. MCL 710.60(1). The statutory scheme expresses a policy of severing the prior, natural family relationship and creating a new and complete substitute relationship after adoption. See *In re Toth*, 227 Mich App 548, 553; 577 NW2d 111 (1998).

But the maternal grandparents had absolutely no intention of doing this. They filed their petition with one main purpose – to permanently eliminate Mr. Musall from Adelyn’s life. See Bench Opinion and Order dated 9/26/13, at 5. They openly admitted their dislike of Mr. Musall and acknowledged that they did not want him to see Adelyn under any circumstances. 8/16/13 Tr. at 69, 89, 90, 92. Yet, they conceded that they would still allow Ms. Schnebelt, who lived with them at various times, the opportunity to remain involved in Adelyn’s life. *Id.* at 93. As the trial court correctly observed, the purpose of the adoption was to take the relationship between Adelyn, her parents and

the grandparents “from a square to a triangle.” See Bench Opinion and Order dated 9/26/13, at 5.

In fact, the maternal grandparents’ adoption of Adelyn’s older sister, Gracie, provides a window into their questionable motives. After Gracie’s adoption, Mr. Musall and Ms. Schnebelt continue to parent Gracie, even after they moved out of the maternal grandparents’ home. 7/19/13 Tr. at 54, 130, 131, 178, 185; 8/16/13 Tr. at 129. Only after Mr. Musall ended his relationship with Ms. Schnebelt did the maternal grandparents prevent him from being a father to his child. But even after they excluded Mr. Musall from caring for Gracie, they continued to allow Ms. Schnebelt to be a mother to her child, despite the fact that her rights to Gracie had also been severed. Again, they used the adoption process solely to eliminate Mr. Musall from Gracie’s life, even though there was strong evidence that Gracie and her father had a close, loving relationship. 7/19/13 Tr. at 134; 8/16/13 Tr. at 110, 111, 112, 133.

In light of the questionable motives of the maternal grandparents in filing the adoption petition, Mr. Musall’s sincere interest in being a father to his daughter, the filing of the paternity action without unreasonable delay and the undisputed fact that he was Adelyn’s birth father, the trial court did not abuse its discretion in determining that “good cause” existed to decide the paternity action first. Thus, this Court should not disturb the trial court’s decision.

II. THE TRIAL COURT DID NOT CLEARLY ERR IN DETERMINING THAT MR. MUSALL, TO THE EXTENT OF HIS ABILITY, SUPPORTED MS. SCHNEBELT AND ADELYN.

Standard of Review

Appellate courts review findings of fact under the clear error standard. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). A decision is only clearly erroneous if “the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *Id.* In applying this standard, appellate courts must give regard to the trial court’s special opportunity to judge the credibility of witnesses who appear before it. MCR 2.613(C).

Argument

If this Court determines that the trial court did not abuse its discretion in finding “good cause” to adjudicate the paternity action first, then it need not reach the second issue – whether the trial court clearly erred in finding that grounds to terminate Mr. Musall’s parental rights did not exist. Once a court finds that a birth father is a child’s legal father, it can no longer terminate his rights pursuant to the Adoption Code unless the case involves a step-parent adoption. MCL 710.51(6). The only way a court can terminate the parental rights of a legal father is through a petition filed pursuant to the Juvenile Code.

But should this Court reach the second issue, it should find that the trial court did not clearly err in denying the adoption petition. To terminate a parent’s rights under the Adoption Code, a trial court must find that a parent either failed to provide substantial and regular support or care to the mother during the pregnancy or to the

mother or the child in the 90 days preceding notice of hearing of the adoption proceeding. MCL 710.39(2).

But in making these findings, the court must also assess the father's actual "ability to provide support or care."⁵ *Id.* Although the statute does not define "ability," it is commonly understood to mean the "power or capacity to do or act physically, mentally, legally, morally or financially." *Random House Webster's College Dictionary* (2014).

Here, the trial court correctly found Mr. Musall provided support to Ms. Schnebelt when she was pregnant with Adelyn and that he did not have the ability to do more. A few weeks after finding out that she was pregnant with Adelyn, Ms.

⁵ This Court should reject the analysis of *In re RFF*, 242 Mich App 188; 617 NW2d 745 (2000), in which the Court of Appeals – in a split opinion – ignored the plain language of the statute and held that the word "ability" in MCL 710.39(2) – only refers to a parent's financial ability. *Id.* at 198-200. The Court of Appeals reached this holding despite the fact that the Legislature did not actually include any language in MCL 710.39(2) limiting "ability" to just financial ability. Regardless of this fact, the Court of Appeals decided to speculate as to whether the Legislature meant something other than what it actually included in the statute.

Judge Wilder, in a dissenting opinion, found that the statute was unambiguous and that nothing in the legislative history suggested an intent to limit ability to financial ability. *Id.* at 211-219 (WILDER, J. dissenting). And Justice Corrigan, in her opinion dissenting from this Court's decision to deny an application filed in the case, also noted that the Court of Appeals' majority had incorrectly looked beyond the plain and unambiguous statutory language and had adopted a holding that raised serious constitutional concerns. *In re RFF*, 463 Mich 895; 618 NW2d 575 (2000) (CORRIGAN, J. dissenting). Justice Corrigan observed that "the [Court of Appeals'] majority speculated that the Legislature did not mean what it clearly stated" and in doing so, impinged "upon [the father's] fundamental liberty interest in the custody of his child." *Id.* at 897. Given this Court's consistent approach in inferring legislative intent by looking at the plain language of a statute, the reasoning in *In re RFF* should be rejected. See, e.g., *In re AJR*, 496 Mich 346, 352-353; 852 NW2d 760 (2014)(to ascertain legislative intent, "this Court begins with the statute's language.").

Schnebelt met with Mr. Musall to discuss his role in raising his newest daughter.

7/19/13 Tr. at 30. Mr. Musall said that he wanted to attend prenatal appointments, be present at Adelyn's birth and be involved in her life, as he had with Gracie. *Id.* at 60, 61, 165; 8/16/13 Tr. at 136. Ms. Schnebelt agreed and said she wanted him at Adelyn's birth as well, just not in the delivery room. 7/19/13 Tr. at 202, 203. Mr. Musall's understanding was that either Ms. Schnebelt or his mother would call him to let him know when Ms. Schnebelt was going into labor. 7/19/13 Tr. at 203.

Over the new few months, Mr. Musall helped Ms. Schnebelt as he was allowed to. He offered to take Ms. Schnebelt to doctor's appointments but she refused his help. 7/19/13 Tr. at 192. On a number of occasions, he gave her money, totaling several hundred dollars, to pay for gas and her phone bill. *Id.* at 71, 72, 73. He also gave her a bag full of clothes, purchased by him and his extended family, for both Gracie and Adelyn. *Id.* at 83.

But he did not have the ability or opportunity to do more. Ms. Schnebelt had very little contact with Mr. Musall during the period prior to Adelyn's birth. She was angry that he was in a new relationship and did not want him involved in her life in any way. *Id.* at 192; Bench Opinion and Order dated 9/26/13, at 5.

After Adelyn was born, Ms. Schnebelt and the maternal grandparents prevented Mr. Musall from playing a substantial or regular role in Adelyn's life. Ms. Schnebelt failed to inform Mr. Musall of Adelyn's birth as she had promised to do. 7/19/13 Tr. at 62, 63, 74; 8/16/13 Tr. at 135, 156; Bench Opinion and Order dated 9/26/13, at 5. Upon leaving the hospital, Ms. Schnebelt lived with the maternal grandparents, who did not

like Mr. Musall, did not want him in their house and did not want him to have any contact with Adelyn. 8/16/13 Tr. at 89, 90. Although Mr. Musall's mother was permitted to see Adelyn, Mr. Musall was not. *Id.* at 141-142.

Then, for a two-month period, Ms. Schnebelt, unbeknownst to her parents, allowed Mr. Musall to see Adelyn. 7/19/13 Tr. at 75, 204, 205. Mr. Musall took immediate advantage of the opportunity, visiting her at least twice a week, and actively caring for her during those visits. 7/19/13 Tr. at 76, 208, 209; 8/16/13 Tr. at 143, 188. He fed her, changed her diapers and took her for walks. 7/19/13 Tr. at 80, 212; 8/16/13 Tr. at 146. He also purchased items, such as diapers, for her. 7/19/13 Tr. at 166; 8/16/13 Tr. at 147. He asked Ms. Schnebelt for permission to see Adelyn more often but she denied his request. 7/19/13 Tr. at 78. His strong desire to be a parent to Adelyn was consistent with how he interacted with his other children, Gracie and Aiden. Numerous witnesses testified that every time he had the opportunity to have a relationship with any of his children, he embraced it and cared for them deeply. 7/19/13 Tr. at 134, 151; 8/16/13 Tr. at 111, 114. In fact, no one ever raised concerns about how Mr. Musall interacted with his children.

But after his mother raised concerns about Adelyn's older sister, Gracie, during a visit, the maternal grandparents and Ms. Schnebelt abruptly stopped visits. 8/16/13 Tr. at 148, 150. They did not permit Mr. Musall to see Adelyn again. *Id.* at 151. Ms. Schnebelt did not communicate with him. 7/19/13 Tr. at 213-215. Instead, after spending months trying to block Mr. Musall from seeing his daughter, the maternal

grandparents filed an adoption petition and requested that the court terminate his parental rights. They sought to permanently sever his relationship with Adelyn.

Given these facts, the trial court correctly found that Mr. Musall did attempt to provide “support and contact with regularity” but that his ability to do more was directly impeded by Ms. Schnebelt and her parents who “decided to limit [Mr. Musall’s] participation in Adelyn’s life and that included his presence at Adelyn’s birth.” See Bench Opinion and Order dated 9/26/13, at 5. The maternal grandmother “was a looming presence in determining who would have contact with whom.” *Id.* at 6. As such, he was stopped from doing more. While Mr. Musall certainly could – and perhaps should – have gone to court to assert his rights, the trial court correctly found that his desire to stay out of court was “understandable” given his history of being able to work out issues involving the children. *Id.* Under the unusual circumstances of this case, the trial court did not commit clear error.

III. THE TRIAL COURT GAVE THE ADOPTION PROCEEDING THE HIGHEST PRIORITY WHEN IT REFUSED TO STAY THE PROCEEDING AND INSTEAD HELD A FULL EVIDENTIARY HEARING ON THE PETITION PRIOR TO ISSUING A RULING IN MR. MUSALL’S PATERNITY ACTION.

Standard of Review

Whether the trial court held hearings in a timely manner is reviewed for an abuse of discretion. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996).

Argument

While the Adoption Code requires trial courts to give adoption proceedings the “highest priority,” the Code also requires trial courts to protect “the rights of all parties

concerned.” MCL 710.21a; 710.25(1). Unlike other statutory schemes like the Juvenile Code, neither the Adoption Code, nor the adoption court rules, contains specific time limits pertaining to how quickly an evidentiary hearing must be held. See, e.g., MCL 712A.19b(1)(requiring juvenile court to issue a decision on a termination of parental rights decision within 70 days of the petition’s filing).

Here, the trial court carefully balanced its statutory mandates to give the adoption proceeding “the highest priority” while protecting Mr. Musall’s rights under the Paternity Act. The maternal grandparents filed an adoption petition on January 14, 2013. Just over a month later, Mr. Musall, after retaining an attorney for the first time, filed a paternity action. Thus, the trial court had the difficult challenge of ensuring that the adoption case proceed expeditiously while simultaneously protecting Mr. Musall’s opportunity to become Adelyn’s legal father under the Paternity Act.

After both actions had been initiated, the trial court combined them as required by the “one family/one judge” provision of the Revised Judicature Act. MCL 600.1023. It then ordered a DNA test and adjourned the adoption case pending the DNA test results. Testing confirmed that Mr. Musall was Adelyn’s father.

Despite the test results, the court refused to stay the adoption proceeding pending the resolution of the paternity action. 7/19/13 Tr. at 16-17. Rather, the court carefully allowed both actions to proceed simultaneously and held a full evidentiary hearing on the adoption petition – after receiving briefs from all three attorneys on the legal issues involved in the case. Only after holding the two-day evidentiary hearing did the trial court grant the motion for summary disposition in the paternity case

making Mr. Musall Adelyn's legal father. By doing so, the court obtained a comprehensive understanding of the family's story before making a decision in either case. And based on this understanding, as set forth in Sections I and II, the trial court did not abuse its discretion in finding "good cause" to issue a decision in the paternity case nor did it clearly err in denying the adoption petition.

CONCLUSION

The trial court did not abuse its discretion in finding “good cause” to decide Mr. Musall’s paternity action prior to dismissing the adoption petition. Nor did it clearly err in determining that the maternal grandparents failed to meet their statutory burden under MCL 710.39. And in issuing these rulings, the trial court gave the proceedings the “highest priority” while protecting Mr. Musall’s rights under the Paternity Act.

If this Court determines that the trial court both abused its discretion and clearly erred, then this matter would still need to be remanded to the trial court for a determination as to whether it would be in Adelyn’s best interest to grant custody to Mr. Musall. MCL 710.39(1).



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